advantageous plan. In this way, wealthier, better informed consumers pay less, and lower income, less well informed consumers pay more.

The business strategy of MCI and WorldCom in local markets carries the odor of cream-skimming and redlining. Both companies have concentrated on serving high-end business customers at the expense of residential and small business customers. Their trunk lines used for local business services typically begin with, and often end with, the high-end downtown areas, but do not reach inner cities, even for the purpose of serving inner city businesses. The applicants' business strategies have generally not included installing switches and trunks in inner cities.

The "Discrimination and Preferences" provision of the Act makes it unlawful for any common carrier to

> make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

47 U.S.C. §202(a). This provision must be read to bar discrimination based on race,[24/] and also to bar discrimination based on geography, especially if such geographical discrimination is a proxy for

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24/ Congress' use of the phrase "class of persons" was not gratuitous; it had to add content to the remainder of the clause. Since the clause already speaks to "locality", the phrase "class of persons" cannot be referring to one's physical address. Instead, it must refer to some other classification of persons, the most obvious of which are race and income.

discrimination based on race or income.25/ Given the enormous economic incentives to discriminate in violation of §202(a), the applicants' complete silence on this subject in the largest merger application in history is completely unacceptable.

25/ The use of the term "community" in Section 214, has been construed broadly:

> No authority has been cited to the effect that 'a community' in Section 214 means only a geographical entity like a town or village....nothing has been offered to show that 'community' does not include an economic 'community' of users, such as international record carriers, or domestic satellite carriers. In fact, there is impairment of direct current service in a geographic area of metropolitan New York more than five miles from the central station. The important concept of 'community' in Section 214 I take to be the public interest. In the issue here raised, the inconvenience of customers of the international record carriers is at least as great as to the carriers themselves.

ITT World Communications, Inc. v. New York Telephone Company, 381 F.Supp. 113, 121 (Gurfein, J.) (S.D.N.Y. 1974). The similar word "locality" in Section 202 should also be broadly construed to include geographic designations formed through social factors such as housing discrimination as well as political geographic boundaries. See Gomillion v. Lightfoot, 364 U.S. 339 (1960) (municipality violates equal protection rights of Black voters by gerrymandering political boundary deliberately to exclude virtually all Black households); U.S. v. Yonkers Board of Education, 624 F.Supp. 1276 (S.D.N.Y. 1985) (a municipality discriminated both in education and in housing when it intentionally sited low income housing in a virtually all Black neighborhood, then insisted on educating the municipality's children in "neighborhood schools"); cf. 1360 Broadcasting Company, 36 FCC 147 (Rev. Bd. 1964) (in dissent, Board Member Joseph Nelson contends that lack of service to Baltimore's Black community must be considered in deciding whether to allow new AM nighttime service.) The Commission has considered whether post-auction geographic partitioning of broadcast PCS licenses to women- and minority-owned businesses would serve the public interest -- an inquiry necessarily predicated in par on the fact that minority entrepreneurs benefit when they have an opportunity to market to geographically identifiable minority communities. See Implementation of Section 309(j) of the Communications Act - Competitive Bidding (Further NPRM), 9 FCC Rcd 6775 ¶4 (1994), discussed in Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees (Report and Order and Further NPRM), 11 FCC Rcd 21831, 21837 ¶3 (1996).

A new generation of potential local service providers must be expressly barred from cream-skimming and redlining. There is simply no economic incentive not to cream-skim and not to discriminate on the basis of geography and thus on the basis of residential segregation.

The past three generations of Jim Crow telephony tells us what happens in practice when applications silent on these issues are rubber stamped. This application, too, is unsuitable for grant because it does not address these issues at all.

B. As Labor Is "Downsized", The Likelihood Of Discrimination Is Significant

There has hardly been any merger a fiftieth this size which was not financed, in substantial part, by firing workers, "outsourcing" functions to avoid paying health benefits, and splitting fulltime jobs into multiple parttime jobs.

The application is mute on MCI WorldCom's labor plans. However, the application does include glowing language about "efficiencies" -- corporate-ese for firing people. See, e.g., Amended Application Narrative, November 21, 1997, p. 8. The application also includes an extensive plan for stock options and executive parachutes. See Agreement and Plan of Merger, November 9, 1997 ("Merger Agreement"), Exhibit 5.7. However, the application is silent on what will happen to the subordinates of the executives who will receive the parachutes.

This Commission may be able to do little to prevent merging companies from using their payrolls to underwrite even an anticompetitive merger. However, the Commission can expect that if merging companies do indulge in extensive layoffs, the companies will present a layoff plan based on an algorithm more equitable than "last hired, first fired." A "last hired, first fired" plan protects the

jobs of those whose long tenure was possible only because they did not have to compete with minorities and women when they first came to be employed.[26] Such a plan would contravene the Commission's common carrier EEO Rule even if it were not implemented with discriminatory intent, since the rule focuses on both intent and impact.[27]

The Commission should require the companies to disclose their worker termination and layoff algorithm now. Upon review of this algorithm, the Commission will be in a position to determine whether additional protections are necessary to insure that layoffs do not disproportionately target minorities, and will not renew and reinvigorate the effects of past employment discrimination.[28]

26/ The Common Carrier EEO Rule was adopted in 1970, at a time when discrimination in the telephone industry was especially rampant. See Rule Making To Require Communications Common Carriers To Show Nondiscrimination in Their Employment Practices (Report and Order), 24 FCC2d 725-27 (1970). Unfortunately, those who were denied entry into the industry a generation ago may now lack sufficient seniority to avoid adverse personnel actions attendant to the proposed merger. On the other hand, those who were able to enter the industry a generation ago partly because discrimination artificially restricted the number of competing applicants for jobs may now enjoy artificial heightened expectations of retention.

27/ Id. at 731 (requiring carriers to assure nondiscriminatory placement and promotion by, inter alia, "[r]eviewing seniority practices to insure that such practices are nondiscriminatory and do not have a discriminatory effect" (emphasis supplied).

28/ Unfortunately, as of this date, the Common Carrier Bureau was unable to provide Rainbow/PUSH with copies of EEO programs or 1997 annual employment reports which may have been filed by MCI and WorldCom. Nor did the applications originally filed, or the amended applications, contain such programs. If these documents exist, MCI and WorldCom should produce them for the record. If they do not exi but are created later, MCI and WorldCom should explain why they did not exist previously. Rainbow/PUSH reserves the right to file a supplemental pleading addressing any such documents.

C. The Merger Is Likely To Frustrate The Commission's Goal Of Fostering Minority Entrepreneurship

It is a national disgrace that fewer than half of one percent of the nation's common carriers -- wireline and wireless -- are minority owned, according to the Minority Media and Telecommunications Council Even this appalling statistic is deceptive, for these companies control only a miniscule fraction of the asset value in the nation's telecommunications infrastructure.

Congress surely meant to remedy this: that is why it included the Telecommunications Development Fund in the Telecommunications Act of 1996,[29/] and added to the Communications Act the words "without discrimination on the basis of race, color, religion, national origin or sex". See 47 U.S.C. §151 (1996). See n. 8 supra (discussing §151 of the Act).

As noted above, the Commission must consider all public interest factors in evaluating mergers. See discussion at pp. 3-13 supra. One such factor is trade concerns raised by the Executive Branch. Market Entry and Regulation of Foreign-Owned Entities, 11 FCC Rcd 3873, 3882-83 ¶24 (1996). Among the types of "trade concerns raised by the Executive Branch" are issues of trade with minorities within our borders. See Executive Order 11246, 30 FR 12319, 12935, 3 CFR, 1964-1965 Comp., p. 339 (September 24, 1965). The Commission concurs

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29/ 47 U.S.C. §614. The goal of the TDF is to "provide for reinvestment, create jobs, and promote technological innovation in the telecommunications industry." Telecommunications Act of 1996 Conference Report, §707, reported at P&F CR STAT 2081 (1996).

with the Executive Branch on the importance of reducing trade and market entry barriers which artificially diminish minority entrepreneurship in telecommunications.30/ One of the market entry barriers which arises from mergers is an increase in the number of "precluded competitors" -- those "that would be likely to enter in the absence of the entry barriers the 1996 Act seeks to address...." Bell Atlantic/NYNEX Order at 26 ¶39. A merged company is even more formidable, vis-a-vis smaller (including minority owned) companies, such as resellers, in pursuing specialized local markets or in pursuing the approximately 17% share of the long distance market not already captured by the four largest long distance firms. The Commission should undertake to estimate the effect of the proposed merger on these precluded small and minority competitors, and require MCI and WorldCom to counterbalance that effect with provisions supportive and protective of small and minority entrepreneurs. Furthermore, if MCI WorldCom will outsource many functions currently performed in-house (e.g. billing and collections), minority entrepreneurs should receive a reasonable share of the outsourced contracts.31/

30/ See generally Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses (Notice of Inquiry), 11 FCC Rcd 6280 (1996).

31/ Commission authority to make this inquiry may be found, inter alia, in 47 U.S.C. §215, which authorizes the Commission to examine essentially all contracts between common carriers and suppliers or subcontractors. While §215 states that the Commission's findings shall be reported to Congress, it does not provide that these reports to Congress are the only use to which the Commission's examination of common carrier contracting may be put. See 47 U.S.C. §§215(a) and 215(c).

The applicants are unlikely to undertake remedial steps without Commission guidance. Rainbow/PUSH has received information suggesting that MCI may be carrying out sharp and unbusinesslike practices directed against small and minority resellers, upon whom MCI relies to promote the MCI name to minorities and other consumer groups for which MCI lacks specialized marketing expertise. TMB Communications, Inc., an Orlando, FL-based minority owned reseller, has alleged, inter alia, that MCI improperly diverted TMB customer revenue, failed to pay commissions owned to TMB, and failed to provide many TMB customers with timely service levels, discounts and program benefits that TMB customers were entitled to receive. TMB also contends that when it repeatedly asked MCI management to stop these practices, MCI terminated TMB's business. If these allegations are true, they provide a basis for predicting how an MCI WorldCom would treat its resellers. If, as is likely, the merger inherently renders it more difficult for minority owned companies to compete by building their own networks, the reseller business will become the only remaining route to entry. Consequently, the TMB allegations take on greater urgency as a consequence of the merger.

In light of the public interest value of minority participation in the mainstream of telecommunications commerce, and considering the unlikelihood that the companies will address this issue on their own initiative, the Commission should -- initially -- explain to the companies the importance of fostering minority entrepreneurship and fair dealing with minority entrepreneurs, and

inquire into their minority entrepreneurship plans and policies.32/

IV. The Merged Entity Cannot Serve The Public Interest If Minorities And Women Are Excluded From Control Positions

An entity seeking to become one of the nation's dominant telecommunications ventures cannot possibly serve the nondiscrimination and diversity-promoting goals of Section 151 of the Telecommunications Act unless it includes minorities or women on its board or in its senior management.

According to the 1996 MCI Annual Report, as of March, 1997 MCI's board consists of eleven White men, two White women, and one Black man, an outside director. According to the 1996 WorldCom Annual Report, as of March, 1997 WorldCom's Board consisted of fifteen White men. WorldCom appears to be the only major telecommunications compar which has not yet integrated its board of directors by either race or gender.

32/ The Commission has only once had the question of minority entrepreneurship before it in connection with a telecommunications merger, and in that instance no precedent was created. When it considered the Bell Atlantic/NYNEX merger, a minority owned company filed ex parte comments asking the Commission to allocate to small and minority businesses ten to twenty percent o contracts for supplies and services. The Commission concluded that the Bell Atlantic/NYNEX merger "is not the appropriate forum for determining whether Bell Atlantic-NYNEX as a merged entity should allocate a certain portion of its contract to small and minority businesses" because "our review of the Bell Atlantic and NYNEX merge [is] focused on the loss of a precluded competitor in LATA 132 [metropolitan New York.]" Bell Atlantic/NYNEX Order at 106 ¶226. T proposed WorldCom/MCI merger, however, affects the national long distance marketplace, rather than only one LATA. Thus, Rainbow/PUSH is presenting this question squarely to the Commission as a matter o first impression. The Commission has not hesitated to rise to the occasion when civil rights issues are pled on the basis of a compelling national interest. See, e.g., Nondiscrimination in the Employment Practices of Broadcast Licensees, 13 FCC Rcd 766 (1968) (proposing adoption of broadcast EEO rule and granting petition for rulemaking filed by the Office of Communication of the United Church of Christ.)

Furthermore, none of MCI's ten principal executive officers or WorldCom's four principal executive officers, as identified in the MCI or WorldCom 1996 annual reports, is a minority or a woman.

The officers and directors of MCI WorldCom are to be designated by WorldCom. See Merger Agreement, §1.7 (Officers and Directors of Surviving Corporation). Exhibit 5.2(a) to the Merger Agreement states that the MCI WorldCom Board "shall consist of fifteen members, eight of whom shall be designated from among the directors of WorldCom, five of whom shall be designated by MCI from among the directors of MCI and two of whom shall be directors designated by WorldCom from among pending acquisitions of WorldCom provided that the persons designated by each party shall be reasonably acceptable to the other party." Thus, the Merger Agreement offers no assurance that the MCI WorldCom Board will include any minorities or women at all.

A company this essential to the nation's telecommunications commerce cannot possibly operate in the public interest with a board and senior staff compcsed entirely of White males. Presidents Nixon, Ford, Carter, Reagan, Bush and Clinton have each ensured that the FCC would be gender and race-integrated. A major FCC regulatee should be at least as representative of its ratepayers as the FCC is representative of the nation.

RELIEF REQUESTED

The Commission should investigate the merger thoroughly and offer the public a reasonable opportunity to comment on the fruits of its investigation. Thereupon it should designate the application for hearing and deny the application.

The model the Commission should follow in processing an application which lacks any meaningful public interest showing may be drawn from Bilingual Bicultural Coalition on the Mass Media v.

FCC, 595 F.2d 621, 629-630 (D.C. Cir. 1978) ("Bilingual").[33/] Petitioners to deny are to be fully involved in a Bilingual inquiry:

> [t]he full report of the Commission's investigation, including all evidence it receives, must be placed in the public record, and a reasonable time allowed for response and rebuttal by petitioners.

Bilingual, 595 F.2d at 634. Rainbow/PUSH will participate thoroughly in any Bilingual inquiry the Commission initiates.

If the Commission is unable to find that the application should be denied outright, it should require the application to be amended as a predicate to closing,[34/] and it should tailor the scope of the representations to be included in the amendment to the scope of the merger.[35/] A meaningful amendment should be fully responsive to the ten issues identifed below.

33/ Bilingual happened to involve EEO compliance, but the procedural course it laid down is applicable to any application for any Commission authorization. For example, the Commission relied on Bilingual in deciding to use such investigatory tools as written interrogatories and depositions to develop the information it needed in order ultimately to decide whether to hold a hearing on possible violations of Section 310(b) of the Act. Fox Television Stations, Inc., 10 FCC Rcd 8452, 8462 ¶224 and n. 16 (1995) (citing Bilingual); recon. denied, 11 FCC Rcd 7773 (1996).

34/ The Commission apparently negotiated conditions with the applicants in the Bell Atlantic/NYNEX merger after initially finding that the merging parties could not meet their burden of showing that the merger would, on balance, promote more competition than it would eliminate. Bell Atlantic/NYNEX Order at 8-10 ¶¶12-16.

35/ In particular, the Commission should avoid the error of imposing conditions so ephemeral that they send the message that the public interest is a trifle, a mere "rounding error" in a huge transaction. As former Commissioner Barrett has pointed out, "[i]n the context of a station assignment, transactions that constitute several million dollars [or even several hundred thousand dollars] are not likely to be affected by an EEO sanction of $20-30,000. Yet, the net effect of EEO violations can have more serious impacts on people's lives than other FCC violations." Edens Broadcasting, Inc., 8 FCC Rcd 4905, 4907 n. 2 (1993) (Statement of Commissioner Andrew C. Barrett, Concurring in Part/Dissenting in Part).

1. MCI WorldCom should be expected to set out its plans for achieving maximum market share in the long distance residential market, to ensure that it will compete aggressively for both middle and low income customers.

2. MCI WorldCom should be expected to adopt a plan to prevent race or income-based marketing of long distance residential services. In particular, MCI WorldCom should be expected to develop a marketing and business development program, using minority owned advertising agencies, media, and resellers, to aggressively seek out low income, middle income and minority long distance customers.

3. MCI WorldCom should be expected to set out its plan, including timetables from the date of authorization, for entering the local residential market. This plan should include a mechanism to prevent cream-skimming and redlining. The plan should be precleared by the Commission before MCI WorldCom is permitted to provide local residential service. It should include these components:

    a. MCI WorldCom should be expected to build switches in minority communities, rather than simply reselling the services already provided by the incumbent local exchange company.

    b. MCI WorldCom's buildout schedules for local residential service should be designed such that at each stage of the buildout, the income and race demographics of each stage of the buildout will approximate those of the entire area being built out.

    c. MCI WorldCom should provide the same level of customer service (including response time for installation and service calls) to low and middle income residential customers as the level of service provided to high-end residential customers and to business customers.

    d. MCI WorldCom should offer low and middle income business and residential customers the same range of rates and incentives it offers to high end customers.

4. MCI WorldCom should be expected to openly disclose all rates and plans in lay language to all local and long distance residential and business customers.

5. MCI WorldCom should be expected to adopt a formula governing layoffs and terminations which is uninfected by the present effects of past discrimination.

6. MCI WorldCom should be expected to adopt an aggressive affirmative action plan aimed at positive recruitment, training and mentoring of women and people of color, with the goal of enabling them to break through the glass ceiling and develop long lasting careers with the company.

7. MCI WorldCom should be expected to deal fairly with entrepreneurs of color when developing and implementing reseller relationships.

8. MCI WorldCom should be expected to develop trade relationships with entrepreneurs and suppliers of color at a level commensurate with MCI WorldCom's proposed status as one of the two principal economic engines driving the long distance and Internet businesses.

9. MCI WorldCom should be expected to develop a plan to enhance minority entrepreneurship in telecommunications, e.g., by making sizeable investments in entrepreneurs of color.

10. MCI WorldCom should be expected to provide for the full participation of women and people of color in its governance and senior decisionmaking management.

Respectfully submitted,

Janice Mathis /dh

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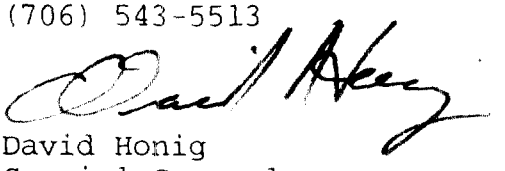

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January 5, 1998

DECLARATION

RE: WorldCom/MCI Merger

My name is Rev. Jesse L. Jackson, Sr. I am the Founder, President, Chief Executive Officer and a member of the Rainbow/PUSH Coalition ("Rainbow/PUSH").

Rainbow/PUSH maintains offices at 930 E. 50th Street, Chicago, IL 60615, at 1002 Wisconsin Avenue N.W., Washington, DC 20007, and at 40 Wall Street, Suite 427, New York, NY 10006. These offices receive and can transmit voice and data over MCI and WorldCom facilities.

I reside at 400 T Street N.W., Washington, D.C. 20001 and 6845 Constance Avenue, Chicago, Illinois 60649. At these locations, I receive and can transmit voice and data over MCI and WorldCom facilities.

Rainbow/PUSH is a stockholder in WorldCom, Inc. and in MCI Communications Corporation.

I have carefully reviewed, and I hereby subscribe to the foregoing Petition to Deny on behalf of Rainbow/PUSH. The facts stated therein are true to my personal knowledge except where identified as having been based upon official records such as documents on file with the FCC.

Rainbow/PUSH and myself individually would be seriously aggrieved if the Petition to Deny is not granted, since as a consequence of its denial members of Rainbow/PUSH, including myself, would be deprived of trade and employment opportunities and local and long distance telephone service at reasonable rates and conditions and in the public interest.

This statement is true to my personal knowledge and is made under penalty of perjury under the laws of the United States of America.

Executed 1/31/97

Rev. Jesse L. Jackson, Sr.
President
Rainbow/PUSH Coalition
930 E. 50th Street

CERTIFICATE OF SERVICE

I, David Honig, hereby certify that I have this 5th day of January, 1998 caused a copy of the foregoing "Petition to Deny" to be delivered by U.S. First Class Mail, postage prepaid, to the following:

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Chairman
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Washington, D.C. 20554

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